THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF GEORGIA MACON DIVISION

EDDIE MAE CLEMONS,

:

Petitioner, : CASE NO. 5:08-CV-90026 (CAR)

:

: 28 U.S.C. § 2255

v. :

CASE NO. 5:07-CR-15 (CAR)

:

UNITED STATES OF AMERICA,

.

Respondent.

:

ORDER ON THE UNITED STATES MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Before the Court is the United States Magistrate Judge's Recommendation [Doc. 67] that Petitioner's Motion to Vacate, Set Aside, or Correct Sentence [Doc. 59] filed pursuant to 28 U.S.C. § 2255 be dismissed. In his Recommendation, the Magistrate Judge found that Petitioner had failed to state a claim upon which this Court might grant relief. Petitioner filed a timely Objection [Doc. 69], in which she asked the Court to strike her motion and allow her to file a revised, non-frivolous motion. Petitioner, in essence, seeks a "do-over." Certainly, many a litigant would like a second chance at drafting a motion or brief after receiving an adverse ruling. However, because Petitioner did file the present 2255 motion and the Magistrate Judge has already considered its merits and found it to be frivolous, any additional motion filed by Petitioner must be considered a second or successive motion, and the district court has no jurisdiction to consider a second or successive Section 2255 motion without leave from Court of Appeals. See 28 U.S.C. § 2244(b)(3)(A). This Court, therefore, will not strike the motion at bar and allow Petitioner to make a second attempt.

Furthermore, having considered the present motion, the Court agrees with the findings and conclusions of the Magistrate Judge. The United State's Magistrate Judge's Recommendation is thus **ADOPTED** and **MADE THE ORDER OF THE COURT**; Petitioner's Motion to Vacate, Set Aside, or Correct Sentence is hereby **DISMISSED**. If Petitioner desires to file a second application, she should seek permission from the United States Court of Appeals for the Eleventh Circuit. <u>See</u> 28 U.S.C.A. § 2255(h) and 28 U.S.C. § 2244(3)(A).

SO ORDERED, this 12th day of January, 2009.

S/C. Ashley Royal
C. ASHLEY ROYAL
UNITED STATES DISTRICT JUDGE

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